

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DARYL ROGERS,

Plaintiff,

v.

SGT. HOWARD, et al.,

Defendants.

Case No. 3:21-cv-05311-BJR-TLF

ORDER

This matter comes before the Court on plaintiff's motions to stay (Dkt. 67) and for appointment of counsel (Dkt. 68). For the reasons discussed below, the Court GRANTS plaintiff's motion to stay and DENIES plaintiff's motion for counsel.

A. Motion to Stay

Plaintiff requests that the Court stay this case for 90-120 days in light of his recent transfer from Stafford Creek Corrections Center (SCCC) to Airway Heights Corrections Center (AHCC). Dkt. 67 at 1. Plaintiff states that his property, including his legal documents, may take up to 90 days to be transferred to his new location. *Id.*

Defendants state that at the time of plaintiff's transfer to AHCC, DOC transferred three boxes of plaintiff's possessions to his new facility at DOC's expense in accordance with DOC policy. Dkt. 69 at 2. Anything in excess of three boxes has to be paid at plaintiff's request and own expense, and defendants are not aware of plaintiff's specific plans for the transport of his additional possessions, including his legal documents. *Id.* Defendants do not oppose a reasonable extension of the deadlines in

1 the pretrial scheduling order so that plaintiff can arrange for the transport of his legal
2 materials. *Id.* Plaintiff states that he is working to arrange for periodic shipments of his
3 materials. Dkt. 71 at 2.

4 Having considered plaintiff's motion and defendants' response, the Court
5 GRANTS plaintiff's motion for a stay. The Court notes that plaintiff recently filed a
6 substantially similar motion in another case pending before this Court, which the Court
7 has granted. *See Rogers v. Washington Dep't. of Corr.*, No. 3:21-cv-05311-BJR-TLF at
8 Dkt. 72. In that matter, the Court granted a stay of 60 days from the date of the
9 December 15, 2022 order; as the same documents and records are at issue here, the
10 stay in this case should expire at the same time. The Court therefore orders that
11 proceedings regarding all parties in this matter will be stayed until February 13, 2023.

12 Accordingly, the Court hereby establishes the following amended pretrial
13 schedule:

- 14 • Any dispositive motions shall be filed and served by **March 17, 2023**.

15 B. Motion for Counsel

16 This is plaintiff's second motion for appointment of counsel. Plaintiff filed his first
17 such motion on May 7, 2021, which the Court denied. Dkts. 4, 8. Having carefully
18 considered that motion and balance of the record, the Court finds plaintiff's current
19 motion should be denied as well.

20 There is no constitutional right to have counsel appointed in a 42 U.S.C. § 1983
21 action. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981); *see also United*
22 *States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995)
23 (“[a]ppointment of counsel under this section is discretionary, not mandatory.”). In
24 “exceptional circumstances,” a district court may appoint counsel for indigent civil
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1 litigants pursuant to 28 U.S.C. § 1915(e)(1)). *Rand v. Roland*, 113 F.3d 1520, 1525 (9th
2 Cir. 1997), *overruled on other grounds*, 154 F.3d 952 (9th Cir. 1998).

3 To decide whether exceptional circumstances exist, the Court must evaluate both
4 “the likelihood of success on the merits [and] the ability of the petitioner to articulate his
5 claims *pro se* in light of the complexity of the legal issues involved.” *Wilborn v.*
6 *Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting *Weygandt v. Look*, 718 F.2d
7 952, 954 (9th Cir. 1983)). A plaintiff must plead facts that show he has an insufficient
8 grasp of his case or the legal issue involved, and an inadequate ability to articulate the
9 factual basis of his claim. *Agyeman v. Corrections Corp. of America*, 390 F.3d 1101,
10 1103 (9th Cir. 2004). That a *pro se* litigant may be better served with the assistance of
11 counsel is not the test. *Rand*, 113 F.3d at 1525.

12 Plaintiff requests appointment of counsel because of an inability to afford a
13 private attorney; he asserts the issues in this case are complex, and he has limited
14 knowledge of the law. Dkt. 68 at 1–3. The inability to afford private counsel, however, is
15 not the type of exceptional circumstance that might warrant appointment of counsel at
16 government expense. Rather, it is the type of condition of confinement that inmates who
17 file civil rights complaints would typically face. See *Wood v. Housewright*, 900 F.2d
18 1332, 1335-36 (9th Cir. 1998).

19 The same is true with respect to plaintiff’s limited knowledge of the law, given
20 that plaintiff has not shown that such factors have prevented him from being able to
21 articulate the factual basis of his claims *pro se*. To the contrary, plaintiff’s filings indicate
22 quite the opposite.

1 Accordingly, plaintiff's motion for appointment of counsel (Dkt. 68) is DENIED,
2 without prejudice.

3 Dated this 11th day of January, 2023.

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Theresa L. Fricke
7 United States Magistrate Judge
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